

OCT 05 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

LARRY DOTSON,)	
)	Civil Action No. 7:06cv00458
Petitioner,)	
)	
v.)	<u>MEMORANDUM OPINION AND</u>
)	<u>ORDER</u>
UNITED STATES OF AMERICA,)	
)	By: Hon. Jackson L. Kiser
Respondent.)	Senior United States District Judge

This matter is before the court upon petitioner's motion for a certificate of appealability. By order of this court entered on August 7, 2006, petitioner's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2254 was denied as successive. A certificate of appealability may issue only if the applicant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(1). A prisoner must demonstrate that reasonable jurists could find not only that his constitutional claims are debatable, but also that this court's decision was debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Furthermore, when the district court denies a petition on a procedural ground, the petitioner must also demonstrate that reasonable jurists would find it debatable whether the district court erred in its procedural ruling. Id.

Court records indicate that this was a second or successive petition, as petitioner had previously filed a § 2254 petition concerning the same conviction. Dotson v. Jarvis, Civil Action No. 7:02CV00006. As petitioner did not present any evidence of certification from the Court of Appeals for the Fourth Circuit, his motion was denied pursuant to 28 U.S.C. § 2244. Petitioner has still failed to produce any evidence of certification. Thus, no reasonable jurist could debate the finding that this petition was successive nor that petitioner failed to present evidence of certification.

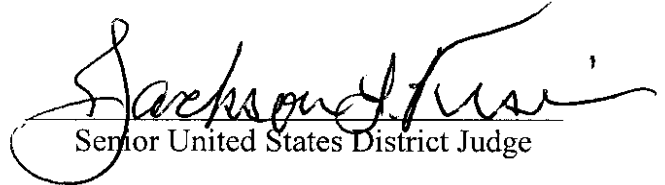
Therefore, it is hereby

ORDERED

that petitioner's motion for a certificate of appealability shall be and hereby is **DENIED**.

The Clerk of the Court is directed to send a certified copy of this Order to petitioner.

ENTER: This 5th of October, 2006.


Senior United States District Judge